

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Dr. A, Nurse A., Dr. C., Nurse D.,
Dr. F., Dr. G., Therapist I., Dr. J.,
Nurse J., Dr. M., Nurse N., Dr. O.,
Dr. P., Technologist P., Dr. S.,
Nurse S., and Physician Liaison X.,

Plaintiffs,

-v-

1:21-CV-1009

KATHY HOCHUL, Governor of
the State of New York, in her
official capacity, DR. HOWARD A.
ZUCKER, Commissioner of the
New York State Department of
Health, in his official capacity, and
LETITIA JAMES, Attorney General
of the State of New York, in her
official capacity,

Defendants.

DAVID N. HURD
United States District Judge

ORDER

On August 26, 2021, the New York State Department of Health (“DOH”) promulgated a regulation that mandates COVID-19 vaccination of health care workers. This regulation requires personnel employed at general hospitals and nursing homes to receive their first dose of a COVID-19 vaccine

by September 27, 2021, and for personnel employed at other covered entities to receive their first dose of a COVID-19 vaccine by October 7, 2021. Unlike a previously applicable Public Health Order, the new regulation excludes any religious exemption. The named plaintiffs are seventeen medical professionals who allege that their sincere religious beliefs compel them to refuse the COVID-19 vaccines that are currently available.

On September 13, 2021, plaintiffs filed this 42 U.S.C. § 1983 action alleging New York’s “vaccination mandate” violates the First and Fourteenth Amendments, the Supremacy Clause, and the Equal Protection Clause of the U.S. Constitution. Plaintiffs moved for a temporary restraining order (“TRO”) and a preliminary injunction that would enjoin defendants from, *inter alia*, enforcing the vaccination mandate “to the extent it categorically requires health care employers to deny or revoke religious exemptions from COVID-19 vaccination mandates.”

On September 14, 2021, the Court granted plaintiffs’ request for a TRO and directed them to serve defendants with their pleading, the motion papers, and the Order granting temporary relief. Dkt. No. 7. The Order further directed defendants to advise the Court if they intended to oppose plaintiffs’ request for a preliminary injunction pending a resolution of the merits of the dispute. *Id.* The Order tentatively scheduled an in-person oral argument for 10:00 a.m. on Tuesday, September 28, 2021. *Id.*

On September 17, 2021, defendants advised that they intended to oppose plaintiffs' request for preliminary injunctive relief. Dkt. No. 13.¹ As relevant here, defendants also requested that oral argument be rescheduled from September 28, 2021 to September 24, 2021. *Id.* Plaintiffs opposed any change in schedule. Dkt. No. 14.

Upon review, and with due consideration for the time-sensitive nature of this dispute, the security considerations necessary to ensure the safety of courthouse visitors and staff, and the health concerns posed by the ongoing COVID-19 pandemic, the Court concludes that oral argument is not necessary to promptly resolve the pending motion. *See* N.D.N.Y. L.R. 7.1(h).

Therefore, it is

ORDERED that

1. The in-person oral argument scheduled for 10:00 a.m. on Tuesday, September 28, 2021 is CANCELLED;
2. Plaintiffs' pending request to convert the TRO to a preliminary injunction will be heard on the submission of the papers with no appearances required or allowed;
3. Defendants' opposition remains due on or before Wednesday, September 22, 2021 at 5:00 p.m.;

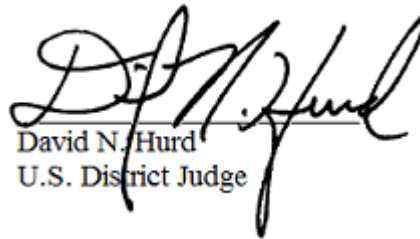
¹ Defendants also indicated that they do not oppose plaintiffs' request to proceed pseudonymously. Dkt. No. 13.

4. Because of the likelihood of irreparable harm to plaintiffs and in light of the fact that the practical effect of the TRO will not begin to restrain the enforcement of the disputed regulation until September 27, 2021, the Court finds that good cause exists to extend the TRO a further fourteen days to October 12, 2021; and

5. A written decision on plaintiffs' request for a preliminary injunction will be issued on or before October 12, 2021.

IT IS SO ORDERED.

Dated: September 20, 2021
Utica, New York.



David N. Hurd
U.S. District Judge